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IN THE

Supreme Court of the United States

OCTOBER TERM 1961

No. 945

JOHN G. DUPUIS, JR.,

Petitioner,

-vs-

CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida entered in the above entitled case on March 6, 1961, which said judgment foreclosed petitioner from any relief by virtue of that certain judgment of the Supreme Court of Florida dated January 31, 1961.

OPINIONS BELOW

The judgment of the Supreme Court of Florida, dated March 6, 1961 (R. 257), has not been reported officially or unofficially. A copy is appended as Appendix I.

The judgment of the Supreme Court of Florida, dated January 31, 1961 (R. 253), is reported at 127 So. 2d 679. A copy is appended as Appendix II.

The opinion of the District Court of Appeal of Florida, Third District, which was the subject matter of the aforementioned two orders (R. 246-247), is reported at 123 So. 2d 34. A copy is appended as Appendix III. That opinion is predicated on two earlier opinions of the same appellate court, reported at 109 So. 2d 596 (R. 240-243) and appended as Appendix IV, and 105 So. 2d 36 (R. 238-239), appended as Appendix V.

The opinion of the lower court, to which all of the foregoing opinions and orders were directed, was dated August 18, 1959 (R. 221-230), and has not been officially or unofficially reported. A copy is appended as Appendix VI.

The temporary injunction that will be hereinafter referred to was entered in the lower court on November 21, 1957 (R. 9a-9b), and has not been officially or unofficially reported. A copy is appended as Appendix VII.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered September 19, 1960, and rehearing thereon was denied (R. 252) on October 5, 1960. On January 31, 1961, the Supreme Court of Florida denied a petition for writ of certiorari (R. 253), and thereafter denied a rehearing thereon on March 6, 1961.

The last order terminating any further litigation or

right of the petitioner to litigate in the State Courts was entered March 6, 1961.

Petitioner believes that Title 28, United States Code, section 1257, sub-section (3), confers jurisdiction on this Honorable Court to review the judgment in question by Writ of Certiorari.

QUESTIONS PRESENTED

Whether or not a State Flood Control District can take and exercise fee simple dominion and control of real property for all kindred purposes of the Flood Control District by virtue of a 1910 deed reservation to the Trustees of the Internal Improvement Fund of the State of Florida and their successors, of the reservation stated as follows:

> "Saving and Reserving unto the said, the Trustees of the Internal Improvement Fund of the State of Florida, and their successors, the right at any time to enter upon the said lands and make or cause to be made and constructed thereon such canals, cuts, sluice-ways, dikes and other works as may in the judgment of the said Trustees, or their successors, be necessary and needful for the drainage or reclamation of any of the lands granted to the State of Florida, by Act of Congress, approved September 28th, 1850, * * * ".

Does the foregoing language create an express easement as an incident and burden of ownership of 130 feet across an entire section of land owned by the Petitioner,

which may be used in perpetuity by the respondent or its assignee, the United States Corps of Engineers?

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Code, and United States Code Annotated, sets out Constitutional Amendment V., as it provides for the protection invoked in this petition. Only, the due process provision of this Amendment is involved, to-wit:

> "Nor (shall any person) be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

STATEMENT OF THE CASE

In 1910 the Trustees of the Internal Improvement Fund deeded, including the entire section of land owned by petitioner, 57,740 acres of land lying and being in the County of Dade, in the State of Florida, to Richard J. Bolles, and included, following the granting clauses and description of the land, the reservation above quoted verbatim in the first question presented. In 1957 the respondent informed petitioner; although it had no deed, that it claimed a right of way 130 feet wide across all of petitioner's land, and told petitioner to forthwith remove any structures therefrom (Petitioner's Exhibit 2).

On August 19, 1957, petitioner brought his Bill of Complaint to Enjoin Trespass, Clouding Title, and for Other Relief in the Circuit Court of the Eleventh Judicial

Circuit, in and for Dade County, Florida, in Chancery, which is the trial, or lower court (R. 1-7).

The respondent filed a general denial thereto and affirmatively alleged that the aforementioned reservation could be obtained by respondent at a later date and get the right to make any improvement in or upon the lands of the petitoiner, as a part of respondent's overall program for flood control, reclamation, drainage and kindred purposes (R. 8-9).

On November 20, 1957, the trial court entered a temporary injunction restraining the respondent from clouding the petitioner's title (R. 9a-9b). A copy is appended as Appendix VII.

On December 6, 1957, sixteen days later, the respondent took a conveyance from the Trustees of the Internal Improvement Fund of approximately 16 acres of land across petitoiner's lands, being a strip 130 feet wide, and the same was recorded on the 12th day of December, 1957, in the Official Records of Dade County, Florida (Respondent's Exhibit E).

The trial court, on the pleadings, pre-trial conference statements and admissions, answers to interrogatories, testimony taken before the Court and exhibits before the Court, entered its Final Decree and Judgment (R. 221-230), after numerous findings of fact, among them being that the respondent was trying to exercise fee simple control over petitioner's lands, and enjoined the respondent from entering into petitioner's lands or clouding his title unless respondent should pay the damages and fees of approximately $174,000.00 found by the trial court as